IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 4205 OF 2005
IN
CRIMINAL APPEAL NO. 1480 OF 2004

Balasaheb Vasant Godse ...Applicant

V/s.

The State of Maharashtra ...Respondent

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Mr. N.P. Deshpande, Advocate the applicant.

Mr. V.B. Konde Deshmukh, A.P.P. for the State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATE OF RESERVING THE ORDER : 18.08.2005

DATE OF PRONOUNCING THE ORDER : 30.08.2005

P.C.:-

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant has been convicted under the Prevention of Corruption Act. The appeal challenging the conviction has been admitted. The applicant has been granted bail. Now the applicant has preferred this application for suspension of sentence.

3. A few facts relating to this case are as under.

. The applicant was working as Teacher in Zilla

Parishad School at Waru, Tq. Mawal, District Pune in the year 2000. The complainant Mr. Bodke (P.W.1) was working as in charge Head Master of the said school. One Mr. Dodke filed a complaint against the complainant Mr. Bodke to the Education Officer. The complaint was enquired into and it was found that the complaint was false. The complainant Mr. Bodke was promoted as Head Master in November, 1998 and he was also eligible for Chief of the Centre and his name was included in the select list. At that time Mr. Dodke again complained against the complainant Mr. Bodke in respect of previous complaint and again enquiry commenced. The said enquiry was being conducted by Block Education Officer Mr. Dhimte i.e. accused No.1. In connection with the enquiry, accused No.1 Mr. Dhimte visited the school at Waru on 27.6.2000. He recorded the statement of the complainant in the present case i.e. Bodke (P.W.1). Then accused No.1 Mr. Dhimte asked the complainant Mr. Bodke (P.W.1) to come to his house on 20.7.2000. Accordingly, the complainant Mr. Bodake went to the house of accused No.1 Dhimte. There accused No.1 asked the complainant Bodke (P.W.1) as to what is to be done about the complaint. The complainant Bodke (P.W.1) told him that the matter was already enquired into and it was concluded and it was found that there was no substance in the complaint of Mr. Dodke, hence, there was no need to enquire in to the matter again. Thereupon, accused No.1 Dhimte demanded

Rs.5,000/- from the complainant i.e. P.W.1 Bodke for closing the enquiry. The complainant P.W.1 Bodke made complaint to the office of A.C.B. at Pune in respect of this demand. On the next day i.e. on 27.7.2000 he was called to the A.C.B. office at Pune, thereafter, pre-trap formalities were carried out. Thereafter P.W.1 Mr. Bodke and panch P.W.2 Mr. Bharti walked to the house of accused No.1. The complainant had talk with accused No.1 Mr. Dhimte and Mr. Dhimte demanded bribe amount and asked the complainant to give that amount to accused No.2 Mr. Godse i.e. the present applicant. Thereupon, the amount was handed over by the complainant P.W.1 Mr. Bodke to the present applicant. The present applicant counted those notes. Thereafter, the complainant gave signal to the raiding party and raiding party rushed to the house of the accused No.1. The notes were found in the hands of the present applicant. The numbers on those currency notes tallied with the numbers on the notes mentioned in the pre trap panchanama. Those notes were checked under the ultra violet lamp. The said notes had anthracene powder. The hands of the present applicant were also found to have anthracene powder. Thereafter, the complaint came to be lodged.

4. After going through the evidence adduced by the prosecution, the learned Special Judge, (Under P.C. Act) Pune by judgment and order dated 19.11.2004

convicted the applicant in Special Case No. 38 of 2001, for the offence under Section 12 of Prevention of Corruption Act, 1988.

5. Being aggrieved by the said judgment and order dated 19.11.2004 convicting the applicant, the applicant preferred Criminal appeal No.1480/2004 before this Court. Initially no prayer was made for suspension of conviction or sentence and only prayer was made for bail, which prayer came to be granted by this Court. Now this application has been preferred for suspension of conviction.

6. The learned advocate for the applicant has submitted that in appropriate cases the High Court on being satisfied about the need for suspending the order of conviction can grant interim stay in respect of the order of conviction. There can be no quarrel with the proposition that if the High Court is satisfied about the need of suspending the order of conviction it can grant interim stay. However, the main question is whether in the facts of the present case it can be said to be an appropriate case to suspend the conviction.

7. The learned advocate for the applicant has submitted that pending appeal if the conviction is not suspended the applicant will suffer irreparable loss because he may be suspended or he may even lose

his job and hence the conviction should be suspended.

8. In the case of **K.C. Sareen Vs. C.B.I. Cnahdigarh reported in (2001) 6 SCC 584,** the Supreme Court has held that if a public servant who is convicted becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. It is further held that when a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself. Hence, it is necessary that the Court should not aid the public servant who stands convicted for corruption charges to hold any public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is to be noted that in the present case the applicant has been convicted in a case of

corruption.

9. In a recent decision the Supreme Court in the case of **State of Maharashtra Vs. Gajanan & Anr. reported in 2004 AIR SCW 80**, has held that the power to suspend the order of conviction should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of conviction the Court should not suspend the operation of the order of conviction. The Court has a duty to look at all aspects including the ramification of keeping such conviction in abeyance. The Supreme Court further observed that the High Court failed to note the directions of the Supreme Court in the case of **K.C. Sareen,** wherein it is held that it is only in very exceptional cases that the Court should exercise such power of stay. The Supreme Court in the case of State of Maharashtra V/s. Gajanan (supra) has further observed that the High Court had not taken into consideration any of the above factors while staying the conviction and hence, the order of suspension of conviction came to be set aside.

10. Thus, merely because the convicted person files an appeal and challenges the order of conviction, the Court should not suspend the operation of the order of conviction. The Court has a duty to look at all aspects including the ramification of keeping such a conviction in abeyance. In my view, looking to the

conduct of the applicant while holding the post of teacher it would send a wrong message to the other teachers and staff in the same school and more especially the students in the shool, if the order of conviction is suspended.

11. Considering all the facts of this case, I do not think that this a fit case wherein the conviction of the applicant can be suspended, hence the application is rejected.

12. At this stage, the learned advocate for the applicant states that permission be granted to the appellant-applicant to prepare the paper books privately at his own costs and thereafter the matter be fixed for final hearing. The prayer is reasonable/ The appellant is permitted to prepare the paper books at his own costs. Appeal be placed on the final hearing board within a week of the paper books being furnished.

13. Criminal application is disposed of.

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